

To: Mr. MD (Legal Guardian) on behalf of “E”

Ms. Sarah Fuller, Executive Director, Norfolk Community Services Board (N-CSB)

From: Patricia Albritton- HPR5- LHRC Chairperson

Date: June 18, 2019

Subject: Findings and recommendations of the Health Planning Region 5 Local Human Rights Committee (HPR5 –LHRC)

Note: The hearing was requested to be heard in OPEN session by Mr. Don Scott, (“E” representative). At the discretion of the LHRC members, the hearing was conducted in CLOSED session. LHRC members expressed concern for the confidentiality and protection for all of the individuals involved, as there were no releases, nor were all involved present at the time of the hearing to authorize the release of protected confidential information.

Statement of Case: The appeal petition by Mr. Don Scott on behalf of “E” requested a fact-finding hearing before the HPR5- LHRC for an alleged violation of the Regulation to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health & Developmental Services (Human Rights Regulations) under:

12VAC35-115-180. Local Human Rights Committee hearing and review procedures.

Mr. Scott on behalf of “E” has alleged the following violation of the Human Rights Regulations:

- 12VAC35-115-50. B.2 Dignity,

On June 4, 2019, the HPR5- LHRC met in response to a request for a fact- finding hearing by Mr. Don Scott, on behalf of “E”. Present at the hearing were:

LHRC members/alternates present at the hearing:

Ms. Patricia Albritton-Chairperson

Dr. William Austin-Member

Adrienne Benjamin-Scott-Member

Ms. Joyce Greenidge-Member

Ms. Cynthia Frazier- Alternate Member

Others present at the hearing:

Mr. Reginald Daye- OHR

Mrs. Bernadette Lege- OHR

Ms. Courtney Myles- OHR

Mrs. Latoya Wilborne-OHR

Mr. Carlton Henderson- OHR

Mr. Andrew Fox- Norfolk City Attorney on behalf of N-CSB

Mr. Brain Casey-Attorney City of Norfolk on behalf of N-CSB

Ms. Sarah Fuller- Executive Director N- CSB/ Witness

Ms. Michelle Davis-N-CSB-staff
Ms. Penny Wile Court Reporter on behalf of N-CSB
Mr. Don Scott- Attorney on behalf of "E"
Mr. Ed Booth- Attorney on behalf of "E"
Mr. MD- Legal Guardian of "E"
Ms. G.-Witness
Ms. V-Witness
Ms. R -Witness
Ms. M-Witness
Ms. J-Witness
Ms. D-Witness
Ms. S-Witness
Ryan Murphy-Virginia Pilot-Media
Michael Mohammed-Public

Having reviewed the request for the hearing and having heard testimony by each noted witness as follows:

Witness: Ms. G;

Ms. G was able to describe in detail the events that occurred prior to, during and after the events on November 15, 2018 by the aggressor (an individual) on the victim "E". Ms. G. is the person (mother) who brought the aggressor to the N-CSB for services, due to concerns for his actions on the day of the incident and in accordance with a court order for outpatient services.

Ms. G stated the aggressor was pacing around in the lobby. She called the Norfolk Police because of his actions while at the N-CSB. Ms. G. stated that staff did not physically intervene during the attack on "E".

Witness: Ms. S;

Ms. S described her education and profession background and her time at the CSB in her current position.

Witness: Ms. R;

Ms. R, Court Liaison, confirmed the court order treatment for the aggressor.

Witness: Ms. M;

Ms. M stated that she conducted the assessment of the aggressor on 11/15/18. She indicated that he was calm and non-threatening during the time he was with her. She also stated that he was talking to himself throughout the assessment and had made an inappropriate comment to her.

Ms. M stated that upon completion of her assessment, she then took him to Ms. V for a financial assessment. Ms. M indicated that she alerted Ms. V of the aggressor talking to himself and that he had made an inappropriate comment to her.

Witness: Ms. V;

Ms. V stated that she conducted the financial assessment. She stated that Ms. M brought the aggressor to her office and told her that he was talking to himself and had said something inappropriate to her during her assessment of him. Ms. M indicated that the aggressor was

talking to himself during the time she was with him. She did not know what the security guard was doing during the attack.

Witness: Ms. D;

Ms. D stated that she did not witness the attack on "E". Ms. D also stated that she did not know the role of the security guard.

Witness: Ms. J;

Ms. J stated that she was in the lobby and observed the actions of the aggressor, who was pacing around in the lobby. She confirmed that the Norfolk police arrived at the N-CSB, but only spoke with the aggressor while outside. Ms. J saw the aggressor punch "E" then hit him with a chair. She stated that she was not sure of the N-CSB policy on managing aggressive behavior. She stated that they could not place hands on an individual in an emergency. She indicated that she tried to position herself in between the aggressor after the attack, as he moved toward the exit. She indicated that a nurse (not called as a witness) assisted, but did not place hand on the aggressor. She did not know what the security guard was doing during the attack.

Witness: Ms. S;

Ms. S indicated that she was not present during the attack on "E" and could only rely on the account of her staff. Ms. S described her role at the N-CSB and the length of time she had been in her present position.

When asked what was the N-CSB policy on managing aggressive behavioral, Ms. S was not able to describe the policy.

Witness: Ms. MJ;

Ms. MJ of Top Guard Security (N-CSB Security Guard at the time) did not show up for the hearing. The company is no longer under contract with N-CSB.

Findings:

In accordance with the Human Rights Regulations, **12VAC35-115-180 LHRC hearing and review procedures** petitioned by "E" and represented by Mr. Don Scott, the HPR5- LHRC finds through its interview of witnesses and the documentation presented during the hearing, the following:

- The Committee finds the N-CSB in violation of the following section of the Human Rights Regulations: **12VAC35-115-50.B.2-Dignity.B.** *"In receiving all services, each individual has the right to: 2.Be protected from harm including abuse, neglect, and exploitation.*

Evidence to support findings:

- Exhibit 8, of Norfolk CSB petition packet: Organizational policy- Personnel support team: Management of Aggressive Behavior #PST-014

- Policy states: “It is the policy of the Norfolk CSB that the use of physical intervention will only be used in the event of an emergency safety situation, and limited to only the least contact between staff and consumer necessary to separate the individual from the situation to prevent harm. An emergency safety situation defined as an unanticipated behavior that places the person served or others at serious threat of violence or risk of injury if no intervention occurs.”
- Based upon the N-CSB staff witnesses testimonies, demonstrates their lack of knowledge of the Norfolk CSB policy PST-014.
- Based upon the N-CSB staff witnesses testimonies and the non-staff witness testimony of the actions of the aggressor prior to the attack on “E”, the committee finds that the N-CSB could have taken additional actions to keep “E” free of harm. It appears that the staff in the lobby (intake) area observed this gradual escalation of aggressive behavior, prior to the attack on “E” but failed to or was not sure of what options were available to them to address his actions.

Recommendation

In consideration of these findings, the committee recommends:

1. The Norfolk CSB develop and implement a policy and procedure to provide options for individuals waiting or being served in the waiting room, in the event a client or peer behavior escalates while being served or waiting for service. Not all inclusive,
 - a) Offer immediate alternative options to the individual and / **or the accompanying family member of the person showing periodic or constant escalating behavior** a separate designated quiet room away from the general waiting area
 - b) Attempt to remove the individual from the general waiting room. If unable to remove individual from **general populated** area, resort to removal of others from the area.
 - c) **When an individual shows periodic or constant escalating behavior (*At first report by individual or someone on their behalf*)** assign additional staff **immediately** to monitor the waiting area and/or one on one staff for that individual during waiting time
 - d) Immediately, at first knowledge of the individual’s crisis/agitated behaviors/ or threats, contact emergency services to meet with the individual, including but not limited to security on site
2. The Norfolk CSB to replace movable furniture with furniture designed to be difficult to move/weighted or affixed to structure
3. The Norfolk CSB to procure security with the City of Norfolk Police Department for service waiting areas
4. All direct care Norfolk CSB staff be retrained on Policy PST-014

5. All direct care Norfolk CSB staff be retrained on Crisis intervention techniques and verbal de-escalation techniques every 6 months thereafter
6. All direct care Norfolk CSB staff be trained on purpose of security officers and their role and responsibility at the Norfolk CSB
7. LHRC cannot address or enforce personnel matter, however, the members have addressed all petition requests through their recommendation

Conclusion:

In accordance with 12 VAC 35-115-180 G of the Human Rights Regulations, within five working days of receiving these LHRC's findings and recommendations, the Executive Director of Norfolk CSB shall give the legal guardian of "E", (Mr. MD), his representative (Mr. Don Scott) and the LHRC members, a written action plan that you intend to take to respond to the above findings and recommendations. The plan shall not be implemented for five working days after it is submitted, unless the individual agrees to its implementation sooner.

If no one objects to the action plan, the director shall begin to implement the plan on the sixth working day after it is submitted, or as otherwise provide in the plan.

If an objection to the action plan is made, and the director does not resolve the objection to the action plan to the individual's satisfaction within two working days following its receipt by the director, the individual may appeal to the SHRC under 12VAC35-115-210.

If either party is dissatisfied with these findings, they can file an appeal to the State Human Rights Committee within 10 working days of the receipt of the findings or Director's Action Plan.

If you have any questions, please contact your representative for assistance in that process.

Thank you,

Cc: Mr. Don Scott, Attorney at Law, representing "E"

Andrew Fox, Norfolk City Attorney representing Norfolk CSB

Bernadette Lege, Human Rights Advocate and Technical Advisor to LHRC, DBHDS

Reginald Daye, Regional Manager, Region 5, DBHDS

Deborah Lochart, Director, Office of Human Rights, DBHDS